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wherein the ancillary code comprises an additional data transmission which is contained within at least one of the video stream, the audio stream, and the data stream.

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Also, in response to the Notice of Draftperson's Patent Drawing Review, formal drawings are being submitted herewith.

## REMARKS

### I. Introduction

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1-83 remain pending in the application. Claims 1, 21, 33, and 45 are independent. Claims 21, 23, and 33 have been amended herein.

Applicants acknowledge with appreciation that the Examiner has allowed Claims 1-20 and 45-83.

Claims 21, 22, 33, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,005,561 to Hawkins in view of U.S. Patent No. 5,958,004 to Helland and U.S. Patent No. 6,434,447 to Shteyn. Claims 23-32 and 38-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkins in view of Helland and Shteyn and in further view of U.S. Patent No. 6,115,680 to Coffee. Claims 34-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkins in view of Shteyn. Applicants traverse these rejections.

### II. Independent Claim 21

Independent Claim 21 recites a method of metering video displayed in a window on a screen of a viewing device. The viewing device is configurable to interface directly with one of a COM interface and an API known to the viewing device. The method includes the steps of: a) determining whether the viewing device interfaces directly to a COM interface or whether

the viewing device interfaces directly to an API interface known to the viewing device; b) when the viewing device interfaces to a COM interface, determining channel data from a channel related object of the COM interface; and c) when the viewing device interfaces to an API interface, calling the API interface so as to determine channel data associated with a video application. Therefore, the invention, as embodied in Claim 21, provides the feature of metering video displayed on a viewing device, where the viewing device may interface directly to either a COM interface or an API known to the viewing device.

Independent Claim 21 has been amended to clarify that the viewing device is configurable to interface directly with one of a COM interface and an API, and that the API to which the viewing device is configurable to interface with is known to the viewing device. No new matter has been added. Support for these amendments may be found at least at page 19, lines 15-21 of the specification.

#### A. Hawkins

Hawkins discloses an interactive information delivery system, including a head end broadcasting a data stream of media objects. The head end is coupled to a broadcast television interface and at least one information service provider, and includes an encoder for encoding information in the media object. The Hawkins system may deliver and implement a programming guide, for example, an Electronic Program Guide (EPG) interface, that delineates programming information available on the information delivery system in one or more media objects in the data stream in an encoded fashion by the encoder. However, Hawkins neither describes nor suggests a viewing device having either a COM interface or an API interface, as acknowledged at Page 2 of the Office Action.

#### B. Helland

Helland discloses a run-time environment implemented as system services and component integration interfaces. The interfaces provide a capability for components of a component-based server application to reversibly disable committal of a transaction in which the component participates. On return from a call to the component which leaves the component's transactional work in an invalid state, the component can disable commit of the transaction so as

to avoid premature committal of the component's transactional work. On return from a call to the component which renders the component's transactional work in a valid state, the component re-enables commit of the transaction. If committal of the transaction is initiated when any component in the transaction disables commit, the transaction is aborted.

As explained at Page 2 of the Office Action, at column 20, line 1 through column 21, line 31 of Helland, Helland "uses both a COM interface and API interface to interact with various parts of a program and transfer data as well as look up data on functions being performed". However, as stated at column 20, line 33 of Helland, "the COM library provides an API function". Later, at column 20, lines 50-55, Helland discloses that "[o]nce the client program has obtained this first interface pointer of the COM object, the client can obtain pointers of other desired interfaces of the component using the interface identifier associated with the desired interface. COM defines several standard interfaces generally supported by COM objects". Therefore, in Helland, the "API function" is a function of the COM object itself. Accordingly, Helland neither describes nor suggests a viewing device that interfaces directly to an API interface. To the extent that Helland discloses an "API function", it is included within the COM object. Furthermore, Helland also fails to describe or suggest the step of determining whether the viewing device interfaces directly to either a COM interface or an API interface known to the viewing device. In Helland, such a determination would not make sense, because if there was an "API function", it would only be in the context of the COM object, so there is no determination to be made.

In addition, Helland is not directed to metering viewing of video displayed on a window of a viewing device. Helland fails to describe or suggest anything related to viewing devices, or to metering viewing of video. Instead, Helland is directed to processing transactions in computer server environments. Therefore, Helland is not analogous to the art of the present invention. Furthermore, Helland is not analogous to Hawkins, and there is no objective teaching provided in either Helland or Hawkins to suggest a motivation to combine the two references. Thus, the Office Action fails to set forth a *prima facie* case of obviousness by failing to point out where the art teaches the alleged motivation set forth.

The law is clear that, in order to prevent hindsight reconstruction, such a *prima facie* case can be established only by showing some objective teaching in the cited art which would lead an individual of ordinary skill in this art to combine the relevant references. See Ex parte Levengood, 28 USPQ2d 1300, 1302 (Patent Office Board of Appeals 1993). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. The mere fact that the prior art may be modified does not make the modification obvious unless the prior art suggested the desirability of the modification. See ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1578, 221 USPQ 929, 933 (Fed. Cir. 1984). It is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the prior art so that the claimed invention is rendered obvious. See In re Gorman, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991).

#### C. Shteyn

Shteyn discloses an information processing system that has an electronic device and a controller for control of a functionality of the device. An abstract representation of the functionality is provided to the controller. The abstract representation exposes a modality of controlling the functionality. The controller enables controlling the functionality through interaction with the abstract representation. The modality controls associating the control of the functionality with a modally compatible controlling capability of the controller. As described at Column 9, lines 20-59, Shteyn discloses using OLE Automation for interacting with a tuner device. Shteyn also discloses the use of COM technology, for example, at Column 7, lines 21 – Column 8, line 5, and Shteyn also discloses the use of API interfaces, for example, at Column 7, lines 58-66. However, Shteyn neither describes nor suggests a step of determining whether a viewing device interfaces directly to either a COM interface or an API interface known to the viewing device, as recited by Claim 21.

In addition, Shteyn is not directed to metering viewing of video displayed on a window of a viewing device. Shteyn fails to describe or suggest anything related to metering viewing of video. Instead, Shteyn is directed to controlling functionalities of an information

processing system. Therefore, Shteyn is not analogous to the art of the present invention. Furthermore, Shteyn is not analogous to Hawkins, and there is no objective teaching provided in either Shteyn or Hawkins to suggest a motivation to combine the two references. Thus, the Office Action fails to set forth a *prima facie* case of obviousness by failing to point out where the art teaches the alleged motivation set forth.

In the present case, none of the cited references describes or suggests a method of metering video displayed in a window on a screen of a viewing device, wherein the method includes the step of determining whether the viewing device interfaces directly to one of a COM interface and an API known to the viewing device. Furthermore, there is no objective motivation to combine Hawkins, Helland, and Shteyn with respect to the present invention. Accordingly, Applicants respectfully submit that independent Claim 21 is allowable over the cited references. In addition, each of Claims 22-32 depends from Claim 21, and is therefore allowable for the same reasons as discussed above with respect to Claim 21. Each of dependent Claims 22-32 recites additional features and advantages of the invention, and Applicants respectfully request individual consideration of each dependent claim.

### III. Independent Claim 33

Independent Claim 33 recites a software meter arranged to meter video displayed in a window on a screen of a viewing device, the software meter being executed by a processor. The displayed video is transmitted as a video stream, and an audio stream and a data stream are also transmitted to the software meter. The software meter includes the following: a) first program code executable to determine tuning data from a video application related to the displayed video; and b) second program code executable to determine an ancillary code relating to the displayed video. The ancillary code comprises an additional data transmission which is contained within at least one of the video stream, the audio stream, and the data stream.

Claim 33 has been amended to clarify that the ancillary code is an additional data transmission which is contained within at least one of the video stream, the audio stream, and the data stream. No new matter has been added. Support for the amendment may be found at least at page 6, lines 8-17; page 11, lines 8-12; page 9, lines 2-10; and page 16, lines 6-10.

As discussed at Page 3 (and repeated at Page 5) of the Office Action, Hawkins discloses a viewer profiling/EPG system which monitors the programs a user watches. The EPG contains channel and program data which is used by a user to tune to an MPEG-2 stream Program Information Description (PID). However, Hawkins fails to describe or suggest a software meter that includes program code that determines an ancillary code relating to the displayed video, wherein the ancillary code is an additional data transmission which is contained within at least one of the video stream, the audio stream, and the data stream, as recited by independent Claim 33. As described at Column 13, line 42, through Column 14, line 33 of Hawkins, PID packs form at least a portion of the "broadcast data stream" itself, and therefore do not qualify as an additional data transmission which is contained within at least one of the video stream, the audio stream, and the data stream. In contrast, the present invention meters video in part by determining an ancillary code relating to the displayed video, wherein the ancillary code is an additional data transmission, separate from and contained within at least one of the video stream, the audio stream, and the data stream.

Furthermore, as discussed above with respect to claim 21, neither Helland nor Shteyn is directed to metering video displayed on a viewing device. Accordingly, neither Helland nor Shteyn describes or suggests a software meter arranged to meter video displayed in a window on a screen of a viewing device, where the software meter includes program code executable to determine an ancillary code relating to the displayed video. In addition, as discussed above, there is no objective motivation to combine Hawkins, Helland, and Shteyn with respect to the present invention.


Therefore, Applicants respectfully submit that independent Claim 33 is allowable over the cited references. In addition, each of Claims 34-44 depends from Claim 33, and is therefore allowable for the same reasons as discussed above with respect to Claim 33. Each of dependent Claims 34-44 recites additional features and advantages of the invention, and Applicants respectfully request individual consideration of each dependent claim.

#### IV. Conclusion

For the reasons discussed above, Applicants submit that all of the pending claims are allowable. Applicants submit that the application is presently in condition for allowance. Favorable reconsideration and an early Notice of Allowance are requested.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 625-3500. All correspondence should be directed to our address given below.

Respectfully submitted,



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## VERSION SHOWING TRACKED CHANGES

21. (Amended) A method of metering video displayed in a window on a screen of a viewing device, the viewing device being configurable to interface directly with one of a COM interface and an API known to the viewing device, the method comprising the following steps:

- a) determining whether the viewing device interfaces directly to a COM interface or whether the viewing device interfaces directly to an API [interface] known to the viewing device;
- b) [if] when the viewing device [has] interfaces to a COM interface, determining channel data from a channel related object of the COM interface; and,
- c) [if] when the viewing device [has] interfaces to an API interface, calling the API interface so as to determine channel data associated with a video application.

23. (Amended) The method of claim 21 comprising the further following step:

- d) if the viewing device [has] interfaces directly to neither a COM interface nor an API [interface], determining channel data from window controls within a viewing application.

33. (Amended) A software meter arranged to meter video displayed in a window on a screen of a viewing device, the software meter being executed by a processor, the displayed video being transmitted as a video stream, an audio stream and a data stream also being transmitted to the software meter, and the software meter comprising:

- a) first program code executable to determine tuning data from a video application related to the displayed video; and,



b) second program code executable to determine an ancillary identification code relating to displayed video,

wherein the ancillary code comprises an additional data transmission which is contained within at least one of the video stream, the audio stream, and the data stream.